



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
[Redacted])	ADP Case No. 14-03261
)	
Applicant for Public Trust Position)	

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: *Pro se*

11/23/2016

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves trustworthiness concerns raised under Guideline E (Personal Conduct). Eligibility for a public trust position is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaires for Investigation Processing (e-QIP) on September 27, 2012, seeking eligibility for a public trust position. On April 20, 2015, the Department of Defense (DOD) sent him Statement of Reasons (SOR), citing trustworthiness concerns under Guideline E. DOD acted under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); DOD Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation); and the adjudicative guidelines (AG) implemented by DOD on September 1, 2006. The guidelines are codified in 32 C.F.R. § 154, Appendix H (2006), and they replace the guidelines in Appendix 8 of the Regulation.

Applicant answered the SOR on July 13, 2015, and requested a decision based on the record in lieu of a hearing before an administrative judge. Department Counsel submitted the Government's case on September 29, 2015. A copy of the file of relevant material (FORM) was mailed to Applicant on October 23, 2015, and he was instructed to file any objections to the FORM or submit additional matters within 30 days of receipt.

He received the FORM on February 23, 2016, and he did not object to any of the materials in the FORM or submit any additional materials. The case was assigned to me on November 8, 2016.

Findings of Fact¹

The SOR alleges that Applicant falsified his e-QIP by stating that a delinquent student loan was resolved, when he knew that it was not (SOR ¶ 1.a). In his answer to the SOR, Applicant admitted that he incorrectly answered a question in Section 26 of the e-QIP, but denied that he intentionally falsified his answer.

Applicant is a 41-year-old assistant operations manager employed by a defense contractor since September 2007. He has never held a DOD security clearance or eligibility for a public trust position within DOD.

Applicant attended a technical institute from March 1996 to September 1997 and received an associate's degree in computer aided design. He incurred about \$18,000 in student loans for his education.

When Applicant submitted his e-QIP, he disclosed student loans totaling about \$18,000 that became delinquent around May 1999. His pay was garnished for a time while he was employed in the private sector. In his e-QIP, he stated that his student loans were resolved in January 2012. In response to DOHA interrogatories, he stated that he was in the process of resolving his delinquent student loans, but the creditor refused to accept payment from an overseas bank. (FORM Item 5.) When Applicant was interviewed by a security investigator in February 2014, he still had not resolved his delinquent student loans. (FORM Item 6.) In his answer to the SOR, he stated, "Payment had been arranged and I believed the issue to be resolved, however, my payment from my overseas bank was not accepted by the [government agency]." He also stated in his answer that as of July 13, 2015, the date of his answer, all his student loans had been paid in full. His May 2014 credit bureau report reflected one student loan referred for collection, but it reflected no balance due and no past-due payments. (FORM Item 8.)

Policies

Positions designated as ADP I and ADP II are classified as "sensitive positions." Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3. The standard that must be met for assignment to sensitive duties is that the person's loyalty, reliability, and trustworthiness are such that assigning the person to sensitive duties is "clearly consistent with the interests of national security." Regulation ¶ C6.1.1.1. DOD contractor personnel are entitled to the procedural protections in the Directive before any final unfavorable access determination may be made. Regulation ¶ C8.2.1.

¹ Applicant's personal information is extracted from his security clearance application (GX 1) unless otherwise indicated by a parenthetical citation to other documents in the record.

A person who seeks access to sensitive information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information.

When evaluating an applicant's suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. The administrative judge's overarching adjudicative goal is a fair, impartial and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The protection of the national security is the paramount consideration. Under AG ¶ 2(b), "[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security." The Government must present substantial evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). An applicant has the ultimate burden of demonstrating that it is clearly consistent with national security to grant or continue eligibility for access to sensitive information.

Analysis

Guideline E, Personal Conduct

The concern under this guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect [sensitive] information. Of special interest is any failure to provide truthful and candid answers during the [adjudication] process or any other failure to cooperate with the [adjudication] process.

The relevant disqualifying condition in this case is AG ¶ 16(a): "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire" When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004). An applicant's experience and level of

education are relevant to determining whether a failure to disclose relevant information on an e-QIP was deliberate. ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

Applicant is an experienced, well-educated employee. He falsely stated that his delinquent student loans had been resolved ten months before he submitted his e-QIP in September 2012, knowing that the lender had refused to accept payment from an overseas bank. His delinquent loans were not yet resolved when he was interviewed by a security investigator in March 2014. AG ¶ 16(a) is established.

The following mitigating conditions are potentially relevant:

AG ¶ 17(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

AG ¶ 17(c): the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

AG ¶ 17(a) is not established. Applicant made no effort to correct his incorrect response until he was confronted with the evidence two years after he submitted his e-QIP.

AG ¶ 17(c) is not established. Applicant's falsification is arguably "infrequent," but it is not minor, because falsification of an e-QIP "strikes at the heart" of the adjudication process. ISCR Case No. 09-01652 (App. Bd. Aug. 8, 2011.) It is not mitigated by the passage of time, because it involves his most recent e-QIP. It did not happen under unique circumstances, and it raises doubt about his current reliability and trustworthiness.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a public trust position must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a public trust position by considering the totality of the applicant's conduct and all relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation

for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

I have incorporated my comments under Guideline E and I have considered the factors in AG ¶ 2(a). Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

After weighing the disqualifying and mitigating conditions under Guideline E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the trustworthiness concerns raised by his personal conduct. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with national security to grant him eligibility for a public trust position.

Formal Findings

Paragraph 1, Guideline E (Personal Conduct):	AGAINST APPLICANT
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Subparagraph 1.a:	Against Applicant
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Conclusion

I conclude that it is not clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility is denied.

LeRoy F. Foreman
Administrative Judge